



## **NRDC Comments on ENERGY STAR Guidelines and Operating Procedures**

**January 26, 2018**

On behalf of its more than three million members and electronic activists, the Natural Resources Defense Council (NRDC) respectfully submits its comments in response to EPA's November 20, 2017 request for feedback on the guidelines and operating procedures that govern the agency's highly successful and popular ENERGY STAR labeling program.

### **Introduction**

THE ENERGY STAR labeling program helps consumers and businesses identify the more efficient models of appliances and equipment on the market. ENERGY STAR is one of the government's most popular, successful and cost-effective programs as: a) the label has an 85% recognition rate, an exceptionally high level of brand awareness; b) it produced an estimated \$30 billion in annual energy bill savings in 2016; and c) it has over 1500 partners ranging from manufacturers, retailers, home builders to commercial building owners from across the country. The [cumulative impacts](#) of this voluntary program since its inception in 1992 are even more impressive:

- Utility bill savings of \$430 billion
- 2.7 billion metric tons of avoided carbon dioxide emissions from power plants and direct on-site fossil fuel consumption

The annual program budget of roughly \$50 million dollars is highly leveraged: utilities and efficiency program administrators across the country offered around \$5 billion in financial incentives in 2017. These programs rely heavily on the ENERGY STAR specifications and label due to its integrity, brand recognition, and broad acceptance in the marketplace.

While we are supportive of EPA's decision to seek feedback on and consider constructive changes to its operating procedures and guidelines, extreme care should be taken before making changes to such a successful and popular program. In other words, please do not break what isn't broken. Any review of the ENERGY STAR program should be convened through an agency led effort, including broad public input and follow-up.

### **MOU Regarding DOE and EPA Roles and Responsibilities**

A Memorandum of Understanding (MOU) was developed and implemented several years ago that clearly laid out the roles and responsibilities around the ENERGY STAR program between the Department of Energy (DOE) and EPA. In brief, DOE is responsible for developing the test methods for measuring a product's energy use and for performance/oversight of verification testing to ensure a product is performing as promised (e.g., does a listed product's energy use meet the reported value, and does it qualify for ENERGY STAR?), whereas EPA leads brand awareness and promotion, partner

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outreach, as well as ENERGY STAR specification development and revision efforts. The division of labor outlined in the MOU works very well and we see no justification to make significant changes, as some stakeholders have recently suggested.

EPA has done an excellent job developing and updating the specifications for more than 70 different product categories. It is prudent to keep the specification setting role at EPA for all products, separate from the mandatory minimum efficiency standards program administered by DOE. ENERGY STAR is a voluntary program and its specification process should not be intertwined with DOE's standards setting process.

### **ENERGY STAR Standard Operating Procedures (SOP)**

NRDC has carefully reviewed ENERGY STAR's written SOP and are very supportive of the content, which we find to be very clear, reasonable, and fair for all stakeholders. The specification development process outlined by EPA, which involves collecting data, issuing a framework document and draft and final proposals with opportunities for public comment at every step of the way, is appropriate. We have actively participated in dozens of specification revision proceedings and found EPA's process to be data driven, thorough and transparent, with multiple opportunities for stakeholder input and engagement and believe it should continue to operate this way.

We encourage EPA to continue its practice of publishing a framework document at the beginning of key product updates. These documents lay out the options EPA is considering, include an early call for data, and raises key questions/issues that should be addressed by the new specification.

It should also be noted that the ENERGY STAR program is a voluntary one and should not be subject to the lengthy and more formal processes involved with mandatory programs governed by statute or regulations.

### **Public Participation, Notice, and Comment Periods**

EPA strives to promote transparency in its specification development process. To help continually improve transparency in the procedures it follows and to better engage with a wider body of stakeholders, EPA should make it as straightforward as possible for stakeholders to become involved in the specification setting process. This includes a transparent, searchable, easy-to-use ENERGY STAR product development website and email distribution lists that are up to date and straightforward to enroll in. The existing tools and product pages are a good way to track what has previously happened in the program but do not consistently provide forward-looking information. However, we are not suggesting and do not support elevating the ENERGY STAR process to a full regulatory-style rulemaking.

We concur with EPA's minimum comment periods. We think they strike a reasonable balance between providing sufficient time for stakeholder comment development and completing the specification setting/revision process on a timely basis.

### **Data Transparency**

NRDC fully supports an open and transparent process throughout the ENERGY STAR specification setting and implementation processes. We encourage EPA to continue to gather publicly available data when it exists including EPA databases for existing products, DOE product certification data, and data from state agencies such as the California Energy Commission.

A key part of the ENERGY STAR specification setting process is collecting data on the most recent models introduced to the market. In some cases, this data may not be publicly available, in particular for products where it's the first time a specification is being set by ENERGY STAR and for which there is no state or federal level efficiency standard or when ENERGY STAR is adding a new metric, such as resume time for a game console or set top box to wake from its low power sleep state. NRDC requests that any energy use or performance data that is submitted to EPA should be published on a model specific basis that includes make and model number and other key product attributes like size, features, etc. There should be no concerns about confidentiality of energy use of a commercially available product. Special confidentiality considerations should be taken for data a manufacturer provides for a model not yet on the market. To date, this data has been scrubbed and is published without make or model number information. This makes it very hard for other stakeholders to assess whether the data set is sufficiently complete, or whether the data fails to reflect data from certain manufacturers or portions of the market.

### **Specification Setting Stringency**

The guiding principle of the ENERGY STAR program is for labeled products to represent the top 25% or so of models that are on the market from an energy use/efficiency basis. ENERGY STAR should share market saturation data before and after the development of a specification, and explicitly describe how the market saturation projections contribute to where the specification level is set. For some products, like consumer electronics, sometimes closer to 50 percent of products already meet the ENERGY STAR requirements by the effective date of the specification. This could mean that the specification is set at a level that is too lenient, and very high qualification rates at such an early part of the process reduce the value proposition and integrity of the ENERGY STAR label. Greater transparency will help to ensure that specifications are set at an appropriately stringent level.

EPA has in the past selected a level that represents less than the top 25% of the current market in recognition that the market will quickly respond for some product types once the specification goes into effect, or when new commercially available technologies are expected to be adopted that deliver sizable additional efficiency gains. We encourage EPA to continue this proactive approach for certain categories where warranted.

### **Product Sizes and Capacities**

The ENERGY STAR program is generally inclusive of all product sizes and capacities unless constrained by practical considerations such as the lack of a relevant test procedure, insufficient available performance data, or associated performance trade-offs. EPA strives to cover as much of a product category as possible and should preserve the ability to exclude certain product types from the scope of its specification due to a product's size or other unique attribute. For example, EPA may choose not to include TVs that are smaller than 15 inches due to their very low market share and overall energy use, and lack of available data for those products. Similarly, EPA could decide not to initially include certain niche products like "two in one" type products where the product provides multiple functions, such as new laundry products which include a separate modular mini washer that can be run by itself at the same time as the main washer. In this case, there might be insufficient clarity on how to test these devices and a corresponding lack of data collected using consistent testing procedures. As the test methods are updated and test data become available, the agency could add these types of products to the scope during their next specification update.

## **Test Procedure Development or Validation**

The starting point for test methods is usage of the DOE published test method for a product when it exists. When no test method exists or additional testing or clarification is warranted EPA has added their own. In such cases, EPA has often relied on test methods developed by the industry.

NRDC recommends EPA further clarify its position regarding test methods by including clarifying language around the points described below:

- a) EPA reserves the right to add additional tests beyond those contained in published DOE test methods. This might be necessary as the DOE test method might be outdated and fail to capture the additional energy use of a new feature, or fail to include sufficient guidance regarding product set up prior to testing. Some examples include: failure to account for the additional energy consumed by a built-in icemaker in new refrigerators, or failure to connect a smart TV to the internet when measuring its standby power. In other cases, EPA has added some critical performance tests to ensure the consumer has an adequate experience with the ENERGY STAR labeled product. Examples include resume time for set top boxes, or noise and dimmability tests for LED light bulbs. EPA develops these tests in consultation with industry and stakeholders and should continue to do so.
- b) EPA should consider adopting industry developed test procedures when no DOE test method exists but preserve the right to make changes or add additional elements when it deems necessary. EPA should not be required to “rubber stamp” and adopt industry developed test methods if they deem the industry developed methods to be incomplete or outdated.

## **Non-energy Performance Requirements**

Where warranted ENERGY STAR has added key performance requirements to its specifications beyond a product's energy use or efficiency. This was done to meet customer expectations that the ENERGY STAR qualified models perform as well as a typical model on the market. EPA must retain the ability to selectively add additional performance related requirements where warranted and provide its justification during the specification setting process.

## **Market Surveillance/Verification Testing**

An essential element for the success of the program is confidence that ENERGY STAR labeled products deliver the energy savings they promise, and that models don't falsely receive the ENERGY STAR label. The integrity of the brand is essential both for consumers and businesses who choose to buy the ENERGY STAR labeled product and for retailers who stock and promote them, but also to manufacturers and builders to ensure a level playing field with their competitors.

EPA, in coordination with DOE, institutes a product certification and testing program that includes two pieces: a) initial product certification, and b) performance of "off the shelf" testing of ENERGY STAR certified products. i.e. those products on ENERGY STAR's qualified product list. The certification review and testing is done by "certification bodies" (CBs) per guidance and supervision from ENERGY STAR.

The upfront review to ensure a product has met the specification requirements makes sense, as does periodic checking at the back end via product testing of samples collected directly from the marketplace (and not handpicked samples from the manufacturer that might not represent the energy use of

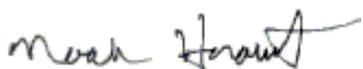
products they are offering for sale). The sampling plan for testing is a combination of models selected at random, along with targeted sampling that might focus on top sellers or portions of the market that warrant closer attention. The cost of the initial product certification reviews and verification testing is borne by the manufacturer, the entity that profits from the sale of ENERGY STAR qualified models.

Some industry stakeholders want to be exempt from up front product certification reviews and subsequent market surveillance testing requirements all together. We strongly disagree with such proposals. If a manufacturer is exempt from verification testing entirely, it provides a pathway to ENERGY STAR eligibility and the associated benefits of the label when the product may not meet the specification requirement, thus negatively impacting the ENERGY STAR brand both for that product as well as all products in the ENERGY STAR program.

We are however open to some form of relaxed verification testing, that would reduce the rate of testing and the overall cost to the manufacturer, as long as it does not compromise the integrity of the ENERGY STAR program and brand. For example, a manufacturer whose ENERGY STAR qualified products have been tested routinely and for which no non-compliant or significant under reporting of product energy use was observed may be eligible for less frequent verification testing. ENERGY STAR could also entertain proposals to reduce the frequency of testing it performs itself for those sectors with very high compliance rates and/or where industry has its own testing program that mirrors the sampling, testing and reporting requirements currently employed by EPA and the CBs.

We appreciate the opportunity to submit these comments and will continue to actively participate in the ENERGY STAR program review and future specification setting processes.

Respectfully submitted by:

A handwritten signature in black ink that reads "Noah Horowitz". The signature is written in a cursive, slightly slanted style.

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